

# CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

RALPH L. MCAFEE  
HENRY W. DEKOSMIAN  
ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
JOHN F. HUNT  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HEGEL  
CHRISTINE BESHAR  
ROBERT S. RIFKIND

DAVID BOIES  
DAVID O. BROWNWOOD  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MULLEN  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. SENZEL  
DOUGLAS D. BROADBENT  
ALAN C. STEPHENSON  
RICHARD L. HOFFMAN  
JOSEPH A. MURPHY  
MAX R. SHULMAN  
WILLIAM P. DICKEY  
STUART W. GOLD  
JOHN W. WHITE  
JOHN E. BEERBOWER  
EVAN R. CHESLER  
PATRICIA GEOGHEGAN  
D. COLLIER KIRKHAM  
MICHAEL L. SCHLER

13670

RECORDATION NO. .... Filed 1425

JUN 24 1982-10 40 AM

INTERSTATE COMMERCE COMMISSION

COUNSEL  
MAURICE T. MOORE  
FRANCIS F. RANDOLPH, JR.

TELEPHONE  
212 422-3000

TELEX  
RCA 233663  
WUD 125547  
WUI 620976

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CABLE ADDRESSES  
CRAVATH, N. Y.  
CRAVATH, LONDON E. C. 2

33 THROGMORTON STREET  
LONDON, EC2N 2BR, ENGLAND  
TELEPHONE: 1-606-1421  
TELEX: 8814901  
RAPIFAX/INFOTEC:  
1-606-1425

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INTERSTATE COMMERCE COMMISSION

13670  
RECORDATION NO. .... Filed 1425

JUN 24 1982-10 40 AM

INTERSTATE COMMERCE COMMISSION ICC Washington, D. C.

Georgia Power Company  
Lease Financing Dated as of May 15, 1982  
16-1/4% Conditional Sale Indebtedness Due 1997

No.

Date JUN 24 1982

Fee \$ 100.00 June 23, 1982

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Georgia Power Company for filing and recordation counterparts of the following Agreements:

(1) (a) Conditional Sale Agreement dated as of May 15, 1982, between The Connecticut Bank and Trust Company, as Trustee, and United-American Car Co., as Builder;

(b) Agreement and Assignment dated as of May 15, 1982, between Mercantile-Safe Deposit and Trust Company, as Assignee, and United-American Car Co., as Builder;

(2) (a) Lease of Railroad Equipment dated as of May 15, 1982, between Georgia Power Company, as Lessee, and The Connecticut Bank and Trust Company, as Trustee; and

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RECEIVED

*Allen S. Brasil*  
*Chas. L. Myers*

(b) Assignment of Lease and Agreement dated as of May 15, 1982, between The Connecticut Bank and Trust Company, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent-Assignee:

Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza,  
Baltimore, Maryland 21203.

(2) Lessee:

Georgia Power Company  
333 Piedmont Avenue  
Atlanta, Georgia 30309

(3) Builder:

United-American Car Co.,  
1870 The Exchange (Suite 260)  
Atlanta, Georgia 30339.

(4) Trustee:

The Connecticut Bank and Trust Company  
One Constitution Plaza  
Hartford, Connecticut 06115.

Please file and record the Agreements referred to in this letter and index them under the names of the Trustee, Lessee, Builder and Agent-Assignee.

The equipment covered by the aforementioned Agreement appears in Exhibit A attached hereto and also bears the legend "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission".

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission representing the required recordation fee.

Please stamp all counterparts of the enclosed Agreements with your official recording stamp. You will

wish to retain one copy of the instrument for your files.  
It is requested that the remaining counterparts be delivered  
to the bearer of this letter.

Very truly yours,

*Laurance V. Goodrich*

Laurance V. Goodrich  
As Agent for Georgia Power  
Company

Agatha L. Mergenovich,  
Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423.

Encls.

JUN 24 1982-10 40 AM

INTERSTATE COMMERCE COMMISSION

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[CS&M Ref. 2164-145]

LEASE OF RAILROAD EQUIPMENT

Dated as of May 15, 1982

Between

GEORGIA POWER COMPANY,

Lessee,

and

THE CONNECTICUT BANK AND TRUST COMPANY,  
not in its individual capacity, but solely as trustee under  
a Trust Agreement dated as of the date hereof with  
Litton Equity Investments, Inc.,

Lessor.

[Covering 224 United-American 100-Ton Coal Cars]

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The rights and interests of the Lessor under this Lease are subject to a security interest in favor of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent for an institutional investor. The original of this Lease is held by said Agent.

LEASE OF RAILROAD EQUIPMENT dated as of May 15, 1982, between GEORGIA POWER COMPANY, a Georgia corporation ("Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, acting not in its individual capacity but solely as trustee (together with its successors and assigns, "Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with Litton Equity Investments, Inc. ("Owner").

The Trustee is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with UNITED-AMERICAN CAR CO., a Delaware corporation ("Builder"), pursuant to which the Builder has agreed to sell and deliver to the Trustee the units of railroad equipment described in Schedule A hereto ("Equipment").

The Builder is assigning its interests in the CSA to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as agent for an investor (said bank, as so acting, together with its successors and assigns, "Vendor") under a Participation Agreement dated as of the date hereof ("Participation Agreement") with the Lessee, the Trustee, the Owner and STATE OF WISCONSIN INVESTMENT BOARD (together with its successors and assigns, the "Investors").

The Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the CSA ("Units") at the rentals and for the terms and upon the conditions hereinafter provided.

The Trustee will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement ("Lease Assignment") dated as of the date hereof, and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement ("Consent") dated as of the date hereof.

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Trustee hereby leases the Units to the Lessee upon the following terms

and conditions:

§ 1. NET LEASE

1.1. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled to any abatement of rent or of other amounts due hereunder, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Trustee or the Owner under this Lease or under the CSA, including the Lessee's rights by subrogation thereunder against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Trustee or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units of Equipment from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization or approval of this Lease, any present or future insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each payment of rentals, Casualty Values and Termination Values made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Trustee, the Owner or the Vendor for any reason whatsoever.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

2.1. Delivery and Acceptance of Units. The Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to Section 3.4 of the CSA. Each delivery of a Unit to the Trustee under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Trustee under the CSA. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect same, and if such Unit is found to be acceptable, to accept delivery of such unit on behalf of the Trustee under the CSA and itself hereunder and execute and deliver to the Trustee a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Section 3.4 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The Lessee hereby represents and warrants to the Trustee that no Unit shall be put into service by the Lessee or any person under the control of or with the consent of the Lessee earlier than the date of delivery to and acceptance by the Lessee as agent for the Trustee hereunder. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Section 3.3 or 4.1 thereof shall be null and void and ineffective to subject such Unit to this Lease.

2.2. Designation of Schedule A, Schedule B and Schedule C Units. All Units which are accepted hereunder on or prior to July 31, 1982, shall be called "Schedule A Units", the first 75 Units which are accepted hereunder after July 31, 1982, and on or prior to September 30, 1982, shall be called "Schedule B Units", the balance of the Units accepted hereunder after July 31, 1982, and on or prior to September 30, 1982, shall be called "Schedule C Units" and all Units which are accepted hereunder after September 30, 1982, and on or prior to December 31, 1982, shall be called "Schedule D Units". The Trustee and the Lessee shall enter into a supplement hereto promptly after final settlement for all Units setting forth the road numbers of the Units which are designated Schedule A, Schedule B, Schedule C and Schedule D Units.

### § 3. RENTALS

3.1. Amount and Date of Payment. (1) The Lessee will pay to the Trustee, as rental for each Schedule A Unit subject to this Lease, one interim rental payment on August 1, 1982, and 30 consecutive semiannual payments, payable in arrears on February 1 and August 1 in each year, commencing February 1, 1983, to and including August 1, 1997. In respect of each Schedule A Unit (a) the interim rental payment shall be in an amount specified in Schedule C hereof and (b) the 30 semiannual rental payments shall each be in an amount equal to 5.72% of the Purchase Price of each such Schedule A Unit.

(2) The Lessee will pay to the Trustee, as rental for each Schedule B Unit subject to this Lease, one interim rental payment on August 1, 1982, another interim rental payment on February 1, 1983, and 29 consecutive semiannual payments, payable in arrears on February 1, and August 1 in each year, commencing August 1, 1983, to and including August 1, 1997. In respect of each Schedule B Unit (a) the interim rental payments shall be the amounts specified in Schedule C hereof and (b) the 29 semiannual payments shall each be in an amount equal to 6% of the Purchase Price of each such Schedule B Unit.

(3) The Lessee will pay to the Trustee, as rental for each Schedule C Unit subject to this Lease, one interim rental payment on August 1, 1982, another interim rental payment on February 1, 1983, and 29 consecutive semiannual payments, payable in arrears on February 1, and August 1 in each year, commencing August 1, 1983, to and including August 1, 1997. In respect of each Schedule C Unit (a) the interim rental payments shall be the amounts specified in Schedule C hereof and (b) the 29 semiannual payments shall each be in an amount equal to 6.5956% of the Purchase Price of each such Schedule C Unit.

(4) The Lessee will pay to the Trustee, as rental for each Schedule D Unit subject to this Lease, one interim rental payment on August 1, 1982, another interim rental payment on February 1, 1983, and 29 consecutive semiannual payments, payable in arrears on February 1 and August 1 in each year, commencing August 1, 1983, to and including August 1, 1997. In respect of each Schedule D Unit, the two



interim rental payments and each of the 29 consecutive semiannual payments shall be in such amounts, as in the reasonable opinion of the Owner, shall cause the Owner's after-tax rate of return and timing and magnitude of the Owner's net after-tax cash flow ("Owner's Economics") to be the same as the Owner's Economics are with respect to the Schedule A Units.

(5) The foregoing rentals and the Casualty Values and the Termination Values set forth in Schedule B hereto, have been calculated on the assumptions that (i) the amount payable to The First Boston Corporation under clause (a) of Section 12.2 of the Participation Agreement will be zero, (ii) the debt-equity ratio for the Schedule A Units will be 58% to 42% and the debt-equity ratio for the Schedule B Units and the Schedule C Units will be 62.19% to 37.81% and (iii) no change shall have occurred after April 20, 1982, and prior to September 30, 1982, in any applicable law, rule, regulation or order or in the interpretation of any thereof by a court or regulatory authority, which would adversely affect the Owner's Economics. If for any reason any of the above assumptions shall not be true and accurate, the Lessor and the Lessee agree that the rentals payable hereunder and the Casualty Values and Termination Values set forth in Schedule B hereto will be adjusted, if necessary, in order that the Owner's Economics will not be increased or decreased by reason thereof. The amount of any such adjustment will be determined by the Owner; provided, that the Lessee shall have the right, by written request, to have GATX Leasing Corporation (or such other independent third party selected by the Owner as shall be acceptable to the Lessee) review the computations made by the Owner to determine compliance by the Owner with the foregoing sentences. Such adjustment shall thereafter become effective when a responsible officer of the Owner shall certify in writing to the Lessee that such adjustment was determined in good-faith compliance with the second sentence of this paragraph (5). The Lessor and the Lessee agree to execute an amendment to this Lease to reflect each such adjustment; provided that such adjustment shall be effective for all purposes of this Lease regardless of whether such amendment is actually executed and delivered.

(6) To the extent the foregoing rentals are not sufficient for the purposes, the Lessee will pay to the Trustee as additional rentals amounts equal to the amounts required by the Trustee to make the payments provided for in

the last paragraph of Section 9.1 of the Participation Agreement on the dates required for such payments, and the Trustee agrees to apply such rentals for such purposes. In addition, the Lessee will pay to the Trustee, on demand, as additional rentals hereunder, all amounts of Investment Losses (as defined in Section 2.1 of the Participation Agreement) and Investment Deficiencies (as defined in Section 2.5 of the Participation Agreement).

(7) In no event shall the aggregate of the foregoing rentals be less than the amounts required to enable the Trustee to satisfy its obligations to pay when due the CSA Indebtedness and interest thereon.

3.2. Payment on Nonbusiness Day. If any of the semiannual rental payment dates provided herein is not a business day (as such term is defined in the CSA) the rental payment otherwise payable on such date shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

3.3. Instructions To Pay Vendor and Trustee. Until the Vendor notifies the Lessee that the CSA is no longer in effect, the Trustee irrevocably instructs the Lessee to make all the payments due the Trustee provided for in this Lease (other than Excluded Payments as defined in the Lease Assignment) to the Vendor, for the account of the Trustee, in care of the Vendor. The Trustee has instructed the Vendor (a) first to apply such payments to satisfy the obligations of the Trustee under the CSA known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Trustee or to the order of the Trustee in immediately available funds at such place as the Trustee shall specify in writing. The Lessee shall have no responsibility with respect to the application by the Vendor of payments made by it in accordance with the first sentence of this paragraph.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for in § 3.1 hereof in immediately available funds at or prior to 11:00 a.m., Baltimore time, at the office of the Vendor on

the date due, or, if the CSA shall no longer be in effect, at the office of the Trustee.

#### § 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to §§ 3, 6, 7, 9, 13 and 15 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights and obligations of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment under § 12 hereof. The Trustee covenants that so long as an Event of Default hereunder or an event which, with the passage of time or the giving of notice, or both, would constitute an Event of Default hereunder shall not have occurred and be continuing, it will not interfere in the Lessee's quiet enjoyment or possession of any Unit and agrees that the Lessee shall not be deprived of its right of quiet enjoyment and possession of any Unit as a result of any act of, or claim against, the Trustee not related to the transactions contemplated by the Participation Agreement, its ownership of the Units or the administration of the Trust Estate.

## § 5. IDENTIFICATION MARKS

The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side in letters not less than one inch in height, the words, "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Vendor or the Trustee, with appropriate changes thereof and additions thereto as from time to time may be designated by the Trustee or the Vendor as required by law or reasonably requested in order to protect the Trustee's and the Vendor's title to and interest in such Unit and the rights of the Trustee under this Lease and of the Vendor under the CSA. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Trustee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Trustee's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Trustee in such Units.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily

used by the Lessee or any of its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Equipment under this Lease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Lessee therein.

The Lessee may make any change in the lettering of the names, trademarks, initials or other insignias at any time and as often as it deems it appropriate to do so. At the expiration of the Lease or any extension hereof, the Trustee will promptly remove, at the Lessee's sole expense, the Lessee's names, trademarks, initials or other insignias and will not allow the Units to be used or operated without first removing same.

#### § 6. TAXES

Whether or not any of the transactions contemplated hereby are consummated, the Lessee shall pay, and shall indemnify, protect, save and keep harmless the Trustee (in both its individual and fiduciary capacities), the Owner, the Vendor, the Investors and the estate held in trust by the Trustee under the Trust Agreement (referred to collectively, together with their respective agents, servants, successors and assigns, as "Indemnified Persons" and individually as "Indemnified Person") from and against, any and all fees, taxes (including, without limitation, income, franchise, excise, sales, use, occupational, capital, value-added, property and stamp taxes and taxes imposed in respect of items of tax preference), levies, assessments, imposts, duties, charges or withholdings of any nature whatsoever, together with any penalties, fines or interest thereon (all of the foregoing being herein collectively called "Taxes") imposed against such Indemnified Person, the Lessee or the Equipment or any part thereof by any Federal, state or local government or taxing authority or by any foreign government, foreign governmental subdivision or other foreign taxing authority (i) upon or with respect to the Units or any part thereof or any interest in any thereof, or (ii) upon or with respect to the manufacture, acquisition, construction, installation, purchase, delivery, ownership, lease, sublease, possession, rental, use, operation, transportation, return, sale, replacement, storage or disposition of the Units or any part thereof, or (iii) upon or with respect

to the rentals, receipts, earnings or gains arising from the Units or any part thereof or the income or proceeds with respect to the Units, including, without limitation, principal, interest and other amounts payable on the CSA Indebtedness, or (iv) upon or with respect to this Lease or any other Documents (as defined in the recitals to the Participation Agreement) including the performance of any of the transactions contemplated hereby or thereby, or the issuance, acquisition or transfer of the CSA Indebtedness or the establishment of the Trust or the beneficial interest of the Owner therein, excluding, however: (1) Taxes which are based on, or measured by, the net income of any Indemnified Person to the extent imposed by the United States of America; (2) Taxes which are based on, or measured by, the net income of any Indemnified Person to the extent imposed by the state, city or municipality in which the principal office of such Indemnified Person is located or by any political subdivision of such state, city or municipality; (3) Taxes which are based on, or measured by, the net income of any Indemnified Person imposed by a state, city or municipality in which such Indemnified Person (and, in the case of the Owner, including any other corporation with which the Owner files a consolidated tax return in such jurisdiction), is subject to net income taxes for reasons other than the leasing of personal property located in such jurisdiction; (4) Taxes imposed on or for the account of any Indemnified Person that result from the gross negligence or wilful misconduct of such Indemnified Person; (5) Taxes which are imposed with respect to any period, or with respect to any act, occurring after the termination of this Lease and the return of the Units to the Trustee in accordance with § 14 of this Lease (unless such termination shall have occurred as a result of this Lease having been declared in default pursuant to § 10 hereof); (6) Taxes for which Lessee is obligated to indemnify the Owner pursuant to the Indemnity Agreement; and (7) Taxes imposed by any foreign government or taxing authority or governmental subdivision of a foreign country to the extent utilized by an Indemnified Person as a credit against United States Federal income taxes otherwise payable by such Indemnified Person, assuming for this purpose that such Indemnified Person, utilizes (A) first, all foreign taxes (including foreign taxes which are carried over to the taxable year for which a determination is being made) other than those described in the succeeding clause (B), and (B) then, on a pro rata basis, all foreign taxes (including foreign taxes which are carried over to the taxable year for which a determination is

being made) with respect to which such Indemnified Person is entitled to obtain indemnification pursuant to an indemnification provision contained in any lease or participation or other tax indemnity agreement relating to a lease (including this Agreement); provided, however, that if the utilization by such Indemnified Person of foreign taxes otherwise payable by the Lessee as a credit against such Indemnified Person's United States Federal income taxes later results in the expiration of any foreign tax credit carryovers or carrybacks of such Indemnified Person that would not otherwise have expired, then the amount of such carryovers or carrybacks shall be treated as Taxes to which this § 6 shall apply, provided, further, however, that all determinations as to the utilization of Taxes as credit and as to whether Taxes are to be excluded from the Lessee's indemnity contained in this § 6 pursuant to this clause (7) shall be made by such Indemnified Person, which determinations shall be conclusive and binding on the Lessee if such Indemnified Person shall certify in writing to the Lessee that such determinations were made in good faith compliance with the provisions in this clause (7); provided, further, however, that none of such exclusions shall apply to Taxes imposed on the trust established by the Trust Agreement, the Trust Estate (as defined in the Trust Agreement) or the Trustee in its capacity as Lessor; provided, further, however, that the Lessee agrees to pay any such Taxes referred to in the foregoing clauses (1) through (7) which are in substitution for or relieve the Lessee from any Taxes or indemnity therefor which and to the extent the Lessee would otherwise be obligated to pay under the terms of this § 6.

With respect to any payment or indemnity under this § 6, such payment or indemnity shall include any amount necessary to hold any Indemnified Person receiving such payment harmless on a net after-tax basis (taking into account any tax benefit or detriment realized by such Indemnified Person as a result of such payment) from all taxes required to be paid by such Indemnified Person with respect to such payment or indemnity under the laws of any Federal, state or local government or taxing authority in the United States of America or any foreign government, foreign governmental subdivision or other foreign taxing authority. In case any report or return is required to be filed with respect to any obligation of the Lessee under this § 6 or arising out of this § 6, the Lessee will either make such report or return in such manner as will show the ownership of the

Units in the Trustee or will notify the Trustee of such requirement and make such report or return in such manner as shall be satisfactory to the Trustee.

Upon the commencement of any proceeding or the receipt by the Indemnified Person of a written claim against an Indemnified Person involving one or more Taxes, such Indemnified Person shall promptly, upon receiving written notice thereof, give notice thereof to the Lessee. The Lessee shall be entitled (a) in any proceeding that involves solely a claim for one or more Taxes, to assume responsibility for and control thereof, (b) in any proceeding involving a claim for one or more Taxes and other claims related or unrelated to the transactions contemplated by the Documents, to assume responsibility for and control of such claim for a Tax to the extent that the same may be and is severed from such other claims (and such Indemnified Person shall use reasonable efforts to obtain such severance unless, in the opinion of counsel for such Indemnified Person, such severance and assumption of responsibility and control by the Lessee has a reasonable possibility of adversely affecting the resolution of such other claims) or (c) in any other case, to be consulted by such Indemnified Person with respect to proceedings subject to the control of such Indemnified Person. Notwithstanding any of the foregoing to the contrary, the Lessee shall not be entitled to assume the responsibility for and control of any such judicial proceedings if (1) the Taxes involved are less than \$25,000 in the aggregate, (2) an Event of Default (as defined in § 10 hereof) or any event which with the lapse of time or the giving of notice or both would become such an Event of Default ("Default") shall have occurred and be continuing, (3) such proceedings will involve any substantial danger of the sale, forfeiture or loss of the Units or any part thereof, or (4) such Tax relates in any way to the business of any Indemnified Person other than the leasing of the Units or, (5) the Lessee shall not have furnished such Indemnified Person with an opinion of independent counsel reasonably satisfactory to such Indemnified Person to the effect that there exists a meritorious basis for contesting that Tax. Such Indemnified Person may participate at its own expense in any proceeding controlled by the Lessee pursuant to the preceding provisions.

The Indemnified Person shall supply the Lessee with such information requested by the Lessee as in the reasonable opinion of counsel to such Indemnified Person is necessary or advisable for the Lessee to control or participate in any proceeding to the extent permitted by this § 6. Unless the Lessee is excluded from control of a proceeding



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, plus or minus, as the case may be, the net amount of all Federal, State, Local and Foreign tax benefits and detriments realized by such Indemnified Person as a result of obtaining such repayment and its payment over to the Lessee.

involving an Indemnified Person pursuant to the preceding paragraph or a Default or Event of Default has occurred and is continuing, such Indemnified Person shall not enter into a settlement or other compromise with respect to any Tax without prior written consent of the Lessee, which consent shall not be unreasonably withheld or delayed, unless such Indemnified Person waives its right to be indemnified with respect to such Tax under this § 6.

If an Indemnified Person shall obtain a repayment of any Tax paid by the Lessee pursuant to this § 6, such Indemnified Person shall promptly pay to the Lessee the amount of such repayment, together with any interest (other than interest for the period, if any, after such Tax was paid by such Indemnified Person until such Tax was paid or reimbursed by the Lessee) received by such Indemnified Person on account of such repayment, [Rider 13-A]

The provisions of this § 6 shall survive the expiration or termination of this Lease and the other Documents.

§ 7. PAYMENT FOR CASUALTY  
OCCURRENCES, INSURANCE,  
ECONOMIC OBSOLESCENCE

7.1. Definition of Casualty Occurrence;  
Payments. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government ("Government") for a period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, or until such Unit shall have been returned in the manner provided in § 11 or 13 hereof, the Lessee shall within ten days after it shall have reasonably determined that such Unit has suffered a Casualty Occurrence notify the Trustee and the Vendor with respect thereto specifying the date, cause and extent of such Casualty Occurrence. On the semiannual rental payment date next succeeding the delivery of such notice (or, in the event the term of this Lease has already expired or will expire within 10 days after delivery of such notice, on a date within 10 days of such delivery), the Lessee shall, subject to the last paragraph of this § 7.1, pay to the Trustee an amount equal to the rental payment or payments in respect of such Unit due and payable

on such date plus a sum equal to the Casualty Value (as defined in the next sentence) of such Unit as of the rental payment date next succeeding such Casualty Occurrence in accordance with Schedule B hereto. The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite the rental payment date next succeeding such Casualty Occurrence. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Trustee shall be entitled to recover possession of such Unit at its own expense. The Casualty Value of each Unit after the last rental payment date of the original term of this Lease shall be the same as the Casualty Value for such last rental payment date.

Notwithstanding the foregoing provisions of this § 7.1, the Lessee shall not be required to make any Casualty Payment in respect of any Unit suffering a Casualty Occurrence after February 1, 1988 ("Casualty Unit") if (i) at least 30 days prior to the date on which such Casualty Payment would otherwise be due ("Due Date"), the Lessee shall give written notice to the Trustee that the Lessee will transfer to the Trustee for lease hereunder other similar equipment ("Substitute Equipment") with a Fair Market Value (as defined in § 13.1 hereof) at least equal to the Fair Market Value of such Casualty Unit and with a coal carrying capacity substantially the same as that of such Casualty Unit and (ii) prior to the Due Date the Lessee shall have transferred to the Trustee, by bill of sale free of all liens, claims and other encumbrances accompanied by an opinion of counsel for the Lessee as to such bill of sale, such Substitute Equipment and an appropriate supplement to this Lease and the CSA adding such Substitute Equipment shall have been filed with the Vendor and the Trustee and filed, recorded and deposited by the Lessee in all public offices where this Lease and CSA shall have been filed, recorded and deposited. The Purchase Price of the Substitute Equipment shall be deemed to be the same as the Purchase Price of the Casualty Unit.

7.2. Lessee Agent for Disposal. The Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof,

before or after the expiration of this Lease, at the best price obtainable by the Lessee upon exercise of reasonable efforts on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Trustee and is not in default hereunder, the Lessee shall be entitled to the proceeds of such disposition to the extent they do not exceed the Casualty Value of such Unit plus the reasonable expenses of the sale, and shall pay any excess to the Trustee.

**7.3. Requisition by United States Government.**

In the event of the requisition for use by the Government of any Unit for a period which does not exceed the term of this Lease, all the obligations of the Lessee under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Trustee or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default or Default shall have occurred and be continuing.

**7.4. No Release.** Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder until expiration of this Lease and Lessee's obligations under §§ 11 and 13 hereof.

**7.5. Insurance.** The Lessee shall, at all times prior to the return of the Equipment to the Trustee, at its own expense, cause to be carried and maintained, with insurers reasonably satisfactory to the Owner, the Trustee and the Vendor, public liability insurance and all risk property damage insurance in respect of the Units, naming the Trustee, the Owner and the Vendor as additional named insureds and, in the case of property damage insurance, as loss payees, as their interests may appear, at least in amounts and against risks customarily insured against by prudent railroad industry practice in respect of equipment similar to the Equipment and in any event comparable to insurance maintained by the Lessee in respect of similar equipment owned or leased by it. In no event shall the coverage of the all risk property damage insurance with respect to any Unit at any time be less than the applicable Casualty Value for such Unit; it being understood that the Lessee may self-insure, on a per occurrence basis, up to \$1,000,000 in the aggregate in respect of its public liability insurance and all risk property damage insurance.

The Lessee shall obtain from each insurer an agreement, by endorsement or separate instrument, that such insurer will give the Trustee, the Owner and the Vendor 30 days' written notice before such insurer's policy shall be materially altered or canceled or not renewed. On or before April 30 of each year, the Lessee shall deliver to the Trustee, the Owner and the Vendor a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy. Any policies of insurance carried in accordance with this paragraph shall in addition waive any right to claim premiums or commissions against the Owner, the Trustee and the Vendor and such policies shall provide that in respect of the interests of the Trustee, the Owner and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Trustee, the Owner and the Vendor, respectively) and shall insure the Trustee, the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Trustee, the Owner or the Vendor, respectively).

7.6. Insurance Proceeds and Condemnation Payments. If the Trustee shall receive (directly or from the Vendor) any insurance proceeds from a policy or policies obtained by the Lessee or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Trustee shall pay forthwith such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Trustee; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Trustee.

7.7. Economic Obsolescence. (1) The Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Trustee, to terminate ("Termination") this Lease as to all Units then subject hereto (subject to the survival of the obligations described in § 4.1 hereof) as of any succeeding rent payment date specified in such notice ("Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than August 1, 1988, (ii) such notice shall be accompanied by a certificate of a responsible officer of the Lessee stating in good faith that the Units are economically obsolete or surplus to the needs of the Lessee, (iii) no Event of Default or other event which after the lapse of time or notice or

both would become an Event of Default shall have occurred and be continuing, (iv) on the Termination Date such Units shall be in the same condition as if being redelivered pursuant to § 14.1 hereof and (v) on the Termination Date the Trustee shall have paid to the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Section 7.2 of the CSA.

(2) If the Lessee shall exercise its option to terminate under § 7.7(1), the Trustee may, by written notice to the Lessee given within 30 days after the termination notice is given to the Trustee, elect to retain the Units then subject to this Lease for its own account or for resale, in which case on the Termination Date (a) the Lessee shall pay to the Trustee an amount equal to the prepayment premium, if any, payable pursuant to Section 7.4 of the CSA on such date in respect of the CSA Indebtedness to be prepaid by the Trustee on such date, the rental payment due on the Termination Date and any other amounts due and payable hereunder on or before the Termination Date, and (b) the Trustee shall pay to the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Section 7.2 of the CSA; provided, however, that the Trustee may not make such election unless it can demonstrate, to the reasonable satisfaction of the Lessee and the Vendor within said 30-day notice period, that it has made firm arrangements with a creditworthy entity to cause the CSA Indebtedness to be prepaid in accordance with Section 7.2 of the CSA on the Termination Date.

(3) If the Trustee shall not make the election described in § 7.7(2), the Lessee shall use its best efforts to obtain bids for the purchase of all Units then subject to this Lease. The Trustee and the Owner may, but shall not be obligated to, solicit bids for the purchase of all Units then subject to this Lease. The Lessee shall certify to the Trustee the amount of each such bid and the name and address of the party submitting such bid (which shall not be a person affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Units). The Trustee shall certify the same information to the Lessee with respect to any bids received by the Trustee. If any bid is received during the first 90 days after the receipt of the Lessee's notice, the highest bid received by the end of said 90-day period will be accepted and the Units will be sold as soon as possible thereafter for cash. If no bid is received during said 90-day period, the first bid received after said 90-day period which is acceptable to the

Lessee will be accepted by the Trustee, and the Units will be sold as soon as possible thereafter for cash. The net proceeds realized from such a sale shall be retained by the Trustee and shall be invested in Investments as defined in Section 2.5 of the Participation Agreement until the Termination Date. The Lessee shall be entitled to instruct the Trustee as to the net sale proceeds to be made. The Lessee shall be entitled to receive on the Termination Date the net income earned on the net sale proceeds to the extent such net income does not exceed the amount payable by the Lessee pursuant to the next sentence, and the Trustee shall be entitled to any balance of such net income. On the Termination Date (a) the Lessee shall pay to the Trustee (i) an amount equal to the rental payment due on the Termination Date and any other amounts due and payable hereunder on or before the Termination Date, (ii) an amount equal to the prepayment premium, if any, payable pursuant to Section 7.4 of the CSA on such date in respect of the CSA Indebtedness to be prepaid by the Lessor on such date and (iii) the excess, if any, of the Termination Value for such Units computed as of such date over the net sales proceeds of such Units, after the deduction of all expenses incurred in connection with such sale, and (b) the Trustee shall pay to the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Section 7.2 of the CSA. Upon payment of the purchase price for the Units by the purchaser thereof, the Trustee shall execute and deliver to the purchaser a bill of sale (on an "as-is, where-is" basis and without recourse, representation or warranty of any kind except as hereinafter stated) for the Units such as will transfer to the purchaser such title to the Units as the Trustee derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Trustee or the Owner, which such parties are required to pay or discharge pursuant to Section 15.2 of the Participation Agreement. The Trustee will request the Vendor to comply with clauses (a) and (b) of Section 5.2 of the CSA.

(4) If no sale shall occur pursuant to § 7.7(4), this Lease shall continue in full force and effect without change as if the notice of termination had never been given.

(5) The Termination Value of each Unit as of the Termination Date shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date, but in no event shall such amount be less than the Termination Value (as defined in Section 7.4 of the CSA) as of such date.

## § 8. REPORTS

On or before April 30 in each year, commencing with April 30, 1983, the Lessee will furnish to the Trustee, the Owner and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Trustee or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and the CSA have been preserved or replaced and (c) providing such data with respect to the use of the Units and any other information that is reasonably required in order to determine the amount of any income, gain or loss attributable to this Lease. The Trustee shall, at its sole cost and expense, have the right (but not the obligation) by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Trustee may request as may be reasonably necessary to confirm to the Trustee the existence of proper maintenance of the Units during the continuance of this Lease.

## § 9. DISCLAIMER OF WARRANTIES; COMPLIANCE WITH LAWS AND RULES; MAINTENANCE; INDEMNIFICATION

9.1. Disclaimer of Warranties. NEITHER THE TRUSTEE NOR THE OWNER MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR USE OR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being



agreed that all such risks, as between the Trustee and the Lessee, are to be borne by the Lessee; but the Trustee hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Trustee may have against the Builder or any other person, including, but not limited to, any claims and rights arising under the provisions of the CSA. The Trustee and the Owner shall not have any responsibility or liability to the Lessee or any other person or entity with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Trustee that the Units described therein are in all respects satisfactory to the Lessee.

9.2. Compliance with Laws and Rules. The Lessee agrees, for the benefit of the Trustee, the Owner and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units ("Applicable Laws"), to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Trustee or the Vendor, adversely affect the property or rights of the Trustee or the Vendor under this Lease or under the CSA.

9.3. Maintenance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order and repair, ordinary wear and tear excepted. Except for alterations or changes required by law, the Lessee shall not, without the prior written approval of the Trustee, effect any permanent structural change in the design, construction or body of the Units or appurtenances thereto which will materially change the use for which the Equipment is intended.

9.4. Additions and Accessions. The Lessee and its affiliates, at their own cost and expense, may from time to time make such alterations, modifications and additions (including, without limitation, any special devices or assemblies at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called "Additions") to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units in accordance with their original conventional purpose and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Trustee and the Vendor as their respective interests may appear in the Unit itself in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such replaced or substituted Part, (ii) such Part is required to be incorporated in or installed as part of the Unit pursuant to the terms of § 9.2 or § 9.3 hereof, or (iii) notwithstanding the provisions of the first paragraph

of this § 9.4, such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default under § 10 hereof (or other event which after lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee. The term Part for the purposes of this paragraph and § 14 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

9.5. Indemnification. Whether or not any of the transactions contemplated hereby are consummated, the Lessee assumes liability for, and shall indemnify, protect, save and keep harmless each Indemnified Person (as defined in § 6 hereof) from and against, any and all liabilities, obligations, damages, penalties, claims, actions, suits, costs and expenses, including legal fees and expenses, of whatsoever kind and nature (herein collectively called "Indemnified Matters") imposed on, incurred by or asserted against any Indemnified Person in any way relating to or arising out of (i) the manufacture, acquisition, construction, installation, purchase, delivery, ownership, lease, sublease, possession, rental, use, condition, operation, transportation, return, sale, replacement, storage or disposition of the Units or any part thereof (including, without limitation, Indemnified Matters in any way relating to or arising out of latent or other defects, whether or not discoverable by the Lessee or any other person, injury to persons or property, patent, trademark or invention rights, or strict liability in tort), or (ii) this Lease or any of the other Documents or any of the transactions contemplated hereby or thereby, or any other document or instrument hereafter executed and delivered pursuant to the terms hereof or thereof, or the enforcement of any of the terms of this Lease or any of the other Documents, or (iii) the enforcement of any agreement, restriction or legal requirement affecting the Units or any part thereof or the ownership, operation or use of the Units or any part thereof, or (iv) the execution and delivery of the CSA Indebtedness; provided, however, that the Lessee shall not be required to indemnify any Indemnified Person for (A) Indemni-

fied Matters resulting from the gross negligence or willful misconduct of such Indemnified Person, or (B) Indemnified Matters in respect of the Units which arise from acts or events that occur after the termination of this Lease and the return of the Units to the Lessor in accordance with § 14 hereof (unless such termination shall have occurred as a result of this Lease having been declared in default pursuant to § 10 hereof), or (C) Indemnified Matters resulting from any violation by such Indemnified Person of Section 5 of the Securities Act of 1933, as amended (or any comparable successor thereto), arising out of any transfer, after the date of this Lease of any of the CSA Indebtedness or of the Owner's equity interest not consented to by the Lessee, or (D) Indemnified Matters resulting solely from the breach of any representation, warranty or covenant made by such Indemnified Person in any of its Documents (as defined in the Participation Agreement), or (E) Taxes described in § 6 hereof and the indemnities provided for in the Indemnity Agreement, or (F) transaction costs to the extent that the Lessee is not required to pay the same pursuant to Section 12.1 of the Participation Agreement.

The Lessee shall be obligated under this § 9.5 irrespective of whether the Indemnified Person shall also be indemnified with respect to such Indemnified Matters elsewhere under this Lease or under any other Document or by any other person, and the Indemnified Person may proceed directly against the Lessee under this § 9.5 without first resorting to any such other rights of indemnification. With respect to any payment or indemnity hereunder, such payment or indemnity shall include any amount necessary to hold any Indemnified Person receiving such payment or indemnity harmless on a net after-tax basis and taking into account any tax benefit realized by such Indemnified Person as a result of such payment from all taxes required to be paid by such Indemnified Person with respect to such payment or indemnity under the laws of any Federal, state or local government or taxing authority in the United States of America.

Upon the commencement of any proceeding or the receipt by an Indemnified Person of a written claim against an Indemnified Person involving one or more Indemnified Matters, such Indemnified Person shall promptly, upon receiving written notice thereof, give notice thereof to the Lessee. The Lessee shall be entitled (a) in any

proceeding that involves solely a claim for one or more Indemnified Matters, to assume responsibility for and control thereof, (b) in any proceeding involving a claim for one or more Indemnified Matters and other claims related or unrelated to the transactions contemplated by the Documents, to assume responsibility for and control of such claim for Indemnified Matters to the extent that the same may be and is severed from such other claims (and such Indemnified Person shall use reasonable efforts to obtain such severance unless, in the opinion of counsel for such Indemnified Person, such severance and assumption of responsibility and control by the Lessee has a reasonable possibility of adversely affecting the resolution of such other claims), or (c) in any other case, to be consulted by such Indemnified Person with respect to proceedings subject to the control of such Indemnified Person. Notwithstanding any of the foregoing to the contrary, the Lessee shall not be entitled to assume responsibility for and control of any such judicial proceedings if (1) the Indemnified Matters involved are less than \$25,000 in the aggregate, (2) a Default or an Event of Default shall have occurred and be continuing, (3) such proceedings will involve any substantial danger of the sale, forfeiture or loss of the Units or any part thereof, (4) such Indemnified Matters relate in any way to the business of any Indemnified Person other than the ownership and leasing of the Units, or (5) the Lessee shall not have furnished the Indemnified Person with an opinion of independent counsel reasonably satisfactory to such Indemnified Person to the effect that there exists a meritorious basis for contesting such Indemnified Matters. The Indemnified Person may participate at its own expense in any proceeding controlled by the Lessee pursuant to the preceding provisions.

The Indemnified Person shall supply the Lessee with such information requested by the Lessee as in the reasonable opinion of counsel to such Indemnified Person is necessary or advisable for the Lessee to control or participate in any proceeding to the extent permitted by this § 9.5. Unless the Lessee is excluded from control of a proceeding involving an Indemnified Person pursuant to the preceding paragraph or Default or an Event of Default has occurred and is continuing, such Indemnified Person shall not enter into a

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, plus or minus, as the case may be, the net amount of all Federal, State, Local and Foreign tax benefits and detriments realized by such Indemnified Person as a result of obtaining such repayment and its payment over to the Lessee.

settlement or other compromise with respect to any Indemnified Matter without prior written consent of the Lessee, which consent shall not be unreasonably withheld or delayed, unless such Indemnified Person waives its right to be indemnified with respect to such Indemnified Matter.

After the payment in full to an Indemnified Person by the Lessee in respect of any Indemnified Matter pursuant to this § 9.5, if such Indemnified Person shall receive any payments in respect of such Indemnified Matter from any person other than the Lessee, such Indemnified Person shall promptly pay to the Lessee the amount of such payment, together with any interest (other than interest for the period, if any, after such Indemnified Matter was paid by such Indemnified Person until such Indemnified Matter was paid or reimbursed by the Lessee) received by such Indemnified Person on account of such payment, *[Rider 25-A]*

Nothing in this § 9.5 shall be deemed to constitute a guarantee by the Lessee of the residual value of the Units or of the payment of the CSA Indebtedness.

9.6. Survival. The indemnities contained in this § 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation which do not already exist in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

9.7. Payments for Indemnification. All payments hereunder shall be made directly to the Indemnified Person.

9.8. Reports. The Lessee agrees at its expense to prepare and deliver to the Trustee within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Trustee) any and all

reports (other than income tax returns) to be filed by the Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Trustee or the Owner of the Units or the leasing thereof to the Lessee.

#### § 10. DEFAULT

10.1. Events of Default; Remedies. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(a) payment of any part of the rental provided in § 3 hereof or payment in respect of any Casualty Occurrence or Termination pursuant to § 7 hereof shall not be made by the Lessee when such payment is due and such default shall continue for 10 days;

(b) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Participation Agreement or the Consent, and such default shall continue for 30 days after written notice from the Trustee or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(c) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(d) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Consent and the Indemnity Agreement (as defined in the Participation Agreement) shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been



filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees;

(e) any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease, the Participation Agreement, the Consent or the Indemnity Agreement, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Participation Agreement, the Consent and the Indemnity Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

(f) an event of default set forth in Article 16 of the CSA shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder or under its Documents (as defined in the Participation Agreement); or

(g) any of the Lessee's representations or warranties made herein, in the Participation Agreement or in the Consent or any statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be breached or found to be false or misleading in any material respect as of the date when made;

then, in any such case, the Trustee, at its option, may,

(A) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(B) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable under this Lease to the extent that this Lease provides that the obligations of the Lessee survive the termination or expiration hereof; and thereupon the Trustee may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Trustee, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Trustee reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 10% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses,

including reasonable attorneys' fees, in addition thereto which the Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Trustee reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Trustee shall have sold any Unit, the Trustee, in lieu of collecting any amounts payable to the Trustee by the Lessee pursuant to the preceding clauses (x) and (y) of this part (B) with respect to such Unit, shall demand that the Lessee pay the Trustee and the Lessee shall pay to the Trustee on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the remedies of the Owner and the Trustee with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

10.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Owner and the Trustee shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

10.3. Failure To Exercise Rights is not Waiver. The failure of the Trustee to exercise the rights

granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies, and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Trustee.

10.4. Notice of Event of Default to Trustee.

The Lessee also agrees to furnish the Trustee, the Owner and the Vendor, promptly upon any responsible officer becoming aware of any condition which constitutes an Event of Default under this Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

§ 11. RETURN OF UNITS UPON DEFAULT

11.1. Return of Units. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Trustee and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Trustee pursuant to this § 11 shall (i) be in the condition required by § 9.3 hereof and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Trustee as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such Units upon such storage tracks as shall reasonably be designated by the Trustee,

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Trustee, and

(c) cause the Units to be moved to the nearest interchange point or points as shall be designated by the Trustee.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold the Lessee shall pay to the Trustee the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

11.2. Trustee Appointed Agent of Lessee.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Trustee as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. ASSIGNMENT; POSSESSION AND USE

12.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Trustee without the consent of the Lessee, provided that such assignee is the Vendor or a domestic financial institution with a combined capital and surplus of at least \$50,000,000, but the Lessee shall not be under any obligation to any assignee of the Trustee other than the Vendor except upon written notice of such assignment from the Trustee and no greater obligations will be imposed on the Lessee on account of such assignment. All the rights of the Trustee hereunder (including, but not limited to, the rights under §§ 6, 7, 9.5 and 10 and the

rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner (other than indemnities payable to the Trustee in its individual capacity) and the respective assigns of the Owner and the Trustee.

12.2. Lessee's Right To Use the Units. (1) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units within the United States of America in accordance with the terms of this Lease and the CSA, subject to the provisions of § 4.2 of this Lease.

(2) The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Trustee and the Vendor; and the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units without the prior written consent of the Trustee and the Vendor except as provided in said paragraph (3) of this § 12.2.

(3) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of any railroad or other trackage over which railroad equipment is regularly operated and shall be entitled to permit the use of the Units by connecting and other carriers in the usual interchange of traffic or pursuant to run-through or trip-lease agreements and to sublease the Units to (i) any operating subsidiary of The Southern Company or (ii) any person which has contracted to purchase the Units pursuant to § 7.7(3) hereof until the date of such purchase pursuant to § 7.7(3) hereof, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or use or permit the assignment, sublease or use of any Unit except upon the terms and conditions of this Lease and the CSA, nor shall the Lessee assign or sublease to or permit the sublease or use of the Units by any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. Any sublease permitted by this § 12.2 shall be expressly subordinate to the right and remedies of the Vendor under the CSA and the Trustee under this Lease in respect of the Units covered by such sublease and no such sublease shall relieve the Lessee of any of its obligations hereunder which, notwithstanding any such sublease, shall remain in full force and effect.

12.3. Lessee's Duty To Discharge Encumbrances. The Lessee, at its own expense, will as soon as possible

cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Trustee or the Vendor not related to the ownership or leasing of, or the security interest of the Vendor in, the Units) which may be imposed during the term hereof, during the period the Lessee is obligated to pay rental hereunder or during the period any Unit is in the possession of the Lessee following default, on or with respect to any Unit (including any accession thereto) or the interest of the Trustee, the Vendor or the Lessee therein; except that this covenant will not be breached by reason of liens, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialman's, mechanic's, workmen's, repairmen's or other like liens arising in the ordinary course of business in each case not delinquent, and furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the Trustee or the Vendor advises the Lessee in writing that the failure to discharge the same does not adversely affect the title, property or rights of the Trustee or the Vendor under the Documents.

12.4. Merger, Acquisition or Consolidation.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder and under the Consent by an appropriate instrument in writing) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.

§ 13. PURCHASE AND RENEWAL OPTIONS

13.1. Purchase Options. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Trustee not less than 270 days prior to the end of the original term of this Lease (which notice shall be irrevocable), elect to purchase all, but not less

than all, the Units then subject to this Lease at a purchase price equal to the lesser of the Fair Market Value thereof or 42% of the Purchase Price thereof. If the Lessee shall deliver such notice, the purchase specified therein shall be consummated on the last day of the original term of this Lease.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Trustee not less than 180 days prior to the end of either renewal term of this Lease (which notice shall be irrevocable), elect to purchase all, but not less than all, the Units then subject to this Lease at a purchase price equal to the Fair Market Value thereof. If the Lessee shall deliver such notice, the purchase specified therein shall be consummated on the last day of such renewal term of this Lease.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Trustee not less than 180 days prior to August 1 of any year, commencing in 1988 (which notice shall be irrevocable), elect to purchase all, but not less than all, the Units then subject to this Lease at a purchase price equal to the greater of the Fair Market Value thereof or the Casualty Value thereof. If the Lessee shall deliver such notice, the purchase specified therein shall be consummated on such August 1. On such August 1, the Lessee shall pay to the Trustee (a) an amount equal to the greater of the Fair Market Value or the Casualty Value of such Units, (b) the rental payment due on such August 1 and (c) an amount equal to the prepayment premium required by Section 7.4 of the CSA; and the Trustee shall prepay the CSA Indebtedness, such prepayment to be treated as a Termination pursuant to § 7.7 hereof and shall include the prepayment premium required by Section 7.4 of the CSA.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or prior to 60 days before the proposed date of sale the Trustee and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units to



be sold, such value shall be determined in accordance with the foregoing definition by an Appraiser. The Appraiser shall be instructed to make such determination within a period of 20 days following appointment and shall promptly communicate such determination in writing to the Trustee and the Lessee. The determination so made shall be conclusively binding upon both the Trustee and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee. The term Appraiser shall mean such independent appraiser as the Trustee may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Trustee, the second by the Lessee and the third designated by the first two so selected.

Upon payment of the purchase price of any Unit, the Trustee shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (on an "as-is, where-is basis" without recourse, representation or warranty of any kind) for such Unit such as will transfer to the Lessee such title to such Unit as the Trustee derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Trustee or the Owner, which such parties are required to pay or discharge pursuant to Section 15.2 of the Participation Agreement. The Trustee will request the Vendor to comply with clauses (a) and (b) of Section 5.2 of the CSA.

13.2. Renewal Options. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Trustee (which notice shall be irrevocable) not less than six months nor more than one year prior to the end of the then current term of this Lease, elect to extend the original or the first extended term of this Lease in respect of all, but not less than all, the Units then subject to this Lease for one 3-year period. The rental payable during each extended term shall be payable semiannually on the anniversaries of the payment dates of the preceding term of this Lease in each year of such extended term and shall be in an amount equal to the "Fair Market Rental".

Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to the rental which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and, in such

determination, cost of removal from the location of current use shall not be a deduction from such rental. If on or prior to 60 days before the commencement of the extended term, the Trustee and Lessee are unable to agree upon the determination of the Fair Market Rental of the Units to be leased, such rental shall be determined in accordance with the foregoing definition by an appraiser in the manner described in the second paragraph of § 13.1 hereof. The Casualty Values applicable to any extended term shall be equal to the Fair Market Value of the Units at each rental payment date under the extended term. If on or prior to 60 days before the commencement of the extended term, the Trustee and the Lessee are unable to agree upon a determination of such Casualty Values, such Casualty Values shall be determined by an appraiser in a manner described in the second paragraph of § 13.1 hereof.

#### § 14. RETURN OF UNITS UPON EXPIRATION OF TERM

On or prior to the termination of the term of this Lease (or any renewal pursuant to § 13 hereof) the Lessee will, at its own cost and expense, at the request of the Trustee, deliver possession of the Units to the Trustee upon such storage tracks as the Trustee may reasonably designate at least 30 days prior to such termination in the ICC Southern District (but in no event at more than three locations), or, in absence of such designation, as the Lessee may select, and permit the Trustee to store such Units on such tracks for a period not exceeding 45 days from the date at which at least 90% of the Units then subject to this Lease are first placed in storage; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. Arrival of a Unit at the designated point shall constitute "Return" for the purposes hereof. During any such storage period the Lessee will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Unit, to inspect the same at the storage locations; provided, however, that the Lessee shall not be liable except in the case of negligence or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any prospective purchaser or lessee, the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the

premises, the Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Trustee pursuant to this § 14 shall (i) be in the condition required by § 9.3 hereof, (ii) have attached or affixed thereto any Part title to which is in the Trustee pursuant to § 9 hereof and have removed therefrom at the Lessee's expense any part title to which is in the Lessee or any other person pursuant to such § 9 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, provided that the Lessee shall not be required to make any additions, modifications or improvements which would not be required of the Lessee if the Lessee continued to operate the Units. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Lessee shall pay to the Trustee the Casualty Value of such Unit as determined in accordance with § 7 hereof. The Lessee shall pay rental at the rate of 0.0333% of the Purchase Price of such Unit per day for any Unit not returned to the Trustee immediately upon expiration of the termination of the initial or any extended term of this Lease. Nothing contemplated by this § 14, including payment by the Lessee of the above-specified amounts, shall be deemed to relieve the Lessee from its obligations to assemble, deliver and store the Units or affect the Trustee's rights and remedies with respect to such obligation.

#### § 15. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA, the Lease Assignment and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. The Lessee will undertake the filing, registering, deposit and recording required of the Trustee under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA or the Lease Assignment.

The Lessee will promptly furnish to the Vendor and the Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory

to the Vendor and the Trustee. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. TRUSTEE'S RIGHT TO PERFORM;  
INTEREST ON OVERDUE RENTALS

Should the Lessee fail to make any payment or to do any act as provided by this Lease, then the Trustee shall have the right (but not the obligation), without notice to the Lessee of its intention to do so and without releasing the Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Units or the Trustee's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of the Trustee appears to affect the Units, and in exercising any such rights, the Trustee may insure any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by the Trustee shall be due and payable by the Lessee within ten days of notice thereof. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to interest at a rate equal to the lesser of 17-1/4% per annum or the highest rate as may be legally enforceable on the overdue rentals and other obligations for the period of time during which they are overdue.

§ 17. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the United States mails, first-class postage prepaid, addressed as follows:

if to the Trustee, at One Constitution Plaza,  
Hartford, Connecticut 06115, Attention of Corporate Trust Department; with a copy to the Owner at  
600 Summer Street, Stamford, Connecticut 06904,  
Attention of Vice President Special Financing;

if to the Lessee, at 333 Piedmont Avenue, Atlanta, Georgia 30309, Attention of Senior Vice President-Treasurer, with a copy to Southern Company Services, Inc., 64 Perimeter Center East (P. O. Box 720071), Atlanta, Georgia 30346, Attention of Financial Vice President;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Copies of each such notice shall be given to the Vendor at Two Hopkins Plaza, P.O. Box 2258, Baltimore, Maryland 21203 attention of Corporate Trust Department or such other address designated by the Vendor. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party. Any notice to the Lessee by the Vendor regarding the Lessee's failure to perform any obligation hereunder shall also be furnished by the Lessee to the Trustee.

§ 18. SEVERABILITY; EFFECT AND  
MODIFICATION OF LEASE;  
THIRD-PARTY BENEFICIARIES

18.1. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

18.2. Effect of Modification of Lease. This Lease and the Indemnity Agreement exclusively and completely state the rights of the Trustee and the Lessee with respect to the leasing of the Units and supersede all other agreements, oral or written, with respect thereto, except the Participation Agreement. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Trustee and the Lessee.

18.3. No Third-Party Beneficiaries. Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owner, the Vendor and the permitted successors and assigns of a party) and

this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

#### § 19. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof.

#### § 20. IMMUNITIES: NO RECOURSE

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all the representations, undertakings, covenants, warranties and agreements herein made on the part of the financial institution acting as Trustee are made and intended not as personal representations, undertakings, covenants, warranties and agreements by said financial institution, or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Lease is executed and delivered by said financial institution not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution or the Owner on account of this Lease or on account of any representations, undertaking, covenant, warranty or agreement of the Trustee (except, in the case of the Trustee only, in the case of gross negligence or wilful misconduct of the Trustee), either expressed or implied, all such personal liability against either said financial institution or the Owner, if any, being expressly waived and released by the Lessee, the Vendor and by all persons claiming by, through or under either of them.

§ 21. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Georgia; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

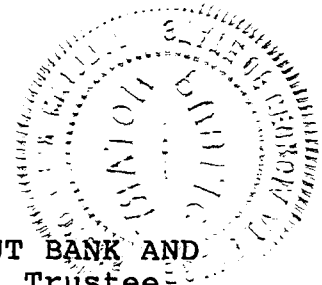
GEORGIA POWER COMPANY,

[Corporate Seal]

by W. L. Westbrook  
Senior Vice President

Attest:

Charles L. Ratterree  
Assistant Secretary



THE CONNECTICUT BANK AND  
TRUST COMPANY, Trustee  
as aforesaid,

[Corporate Seal]

by \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer

W.R. Owens

[Notarial Seal]  
My Commission Expires \_\_\_\_\_  
STATE OF CONNECTICUT

On this                    day of June, 1982, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

## My Commission Expires



Schedule A to the Lease

Units of Railroad Equipment

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>
100-ton 3,600 cu. ft. automatic unloading quad hopper cars	HTS	224	GUAX 82002- 82225

## CASUALTY AND TERMINATION\* VALUES

Schedule A Units

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price**</u>
February 1, 1983	108.71718%
August 1, 1983	109.94284
February 1, 1984	108.69331
August 1, 1984	108.62279
February 1, 1985	106.98118
August 1, 1985	105.23647
February 1, 1986	102.59435
August 1, 1986	99.07108
February 1, 1987	95.46867
August 1, 1987	90.71280
February 1, 1988	86.56550
August 1, 1988	81.93021
February 1, 1989	81.69237
August 1, 1989	76.97501
February 1, 1990	76.40894
August 1, 1990	71.60581
February 1, 1991	70.68418
August 1, 1991	65.78741
February 1, 1992	64.48095
August 1, 1992	59.48349
February 1, 1993	57.76029
August 1, 1993	52.65470
February 1, 1994	50.48019
August 1, 1994	45.25838
February 1, 1995	42.59521
August 1, 1995	37.24841
February 1, 1996	34.05619
August 1, 1996	28.69378
February 1, 1997	25.21734
August 1, 1997	20.00000

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\* Termination is not permitted until August 1, 1988. Termination Values shown do not include any prepayment premium or accrued rental.

\*\* As defined in the CSA.

## CASUALTY AND TERMINATION\* VALUES

Schedule B Units

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price**</u>
August 1, 1983	110.013018
February 1, 1984	109.25442
August 1, 1984	109.19436
February 1, 1985	107.08844
August 1, 1985	105.86497
February 1, 1986	103.32212
August 1, 1986	100.74292
February 1, 1987	97.41735
August 1, 1987	93.48275
February 1, 1988	89.47510
August 1, 1988	84.91561
February 1, 1989	84.55826
August 1, 1989	79.84469
February 1, 1990	79.09640
August 1, 1990	74.26748
February 1, 1991	73.15126
August 1, 1991	68.22519
February 1, 1992	66.71075
August 1, 1992	61.67813
February 1, 1993	59.73074
August 1, 1993	54.58274
February 1, 1994	52.16620
August 1, 1994	46.89411
February 1, 1995	43.96944
August 1, 1995	38.56379
February 1, 1996	35.08879
August 1, 1996	29.57336
February 1, 1997	25.59437
August 1, 1997	20.00000

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\* Termination is not permitted until August 1, 1988. Termination Values shown do not include any prepayment premium or accrued rental.

\*\* As defined in the CSA.

## Schedule B to the Lease

## CASUALTY AND TERMINATION\* VALUES

Schedule C Units

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price**</u>
August 1, 1983	114.670138
February 1, 1984	115.31131
August 1, 1984	116.05407
February 1, 1985	114.48227
August 1, 1985	113.94234
February 1, 1986	111.95996
August 1, 1986	109.78034
February 1, 1987	106.80761
August 1, 1987	102.88206
February 1, 1988	98.69143
August 1, 1988	93.17113
February 1, 1989	92.75117
August 1, 1989	87.26147
February 1, 1990	86.49916
August 1, 1990	80.91255
February 1, 1991	79.72895
August 1, 1991	74.03081
February 1, 1992	72.39155
August 1, 1992	66.57549
February 1, 1993	64.44289
August 1, 1993	58.50036
February 1, 1994	55.83362
August 1, 1994	49.75495
February 1, 1995	46.50989
August 1, 1995	40.28467
February 1, 1996	36.41354
August 1, 1996	30.21068
February 1, 1997	26.04127
August 1, 1997	20.00000

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\* Termination is not permitted until August 1, 1988. Termination Values shown do not include any prepayment premium or accrued rental.

\*\* As defined in the CSA.

Computation of Interim Rental Payments

The Investor and the Trustee will have deposited amounts with the Agent on the Deposit Date and on the Additional Deposit Date (if any) pursuant to Section 2.1 of the Participation Agreement. Such amounts will be known as the "Initial Deposited Amount" and "Additional Deposited Amount", respectively, or collectively as "Deposited Amounts".

For the purposes of this computation, it will be assumed that the Deposited Amounts will be applied in the chronological order received by the Agent to purchase Units in the same order delivered under the CSA, and finally to the repayment of any Surplus Deposit and Excess Equity.

The Lessee will pay to the Trustee, as interim rental pursuant to § 3.1 of the Lease the following amounts:

(A) An interim rental payment on August 1, 1982, in an amount equal to the product of:

(1) the Initial Deposited Amount

(2) .0317778%

(3) the number of days elapsed from and including the Deposit Date, to and excluding August 1, 1983.

(B) A supplemental interim rental payment on the Cut-Off Date at the request of the Trustee in order to provide sufficient funds to make the interest payment to Investor on the Surplus Deposit required on the Cut-Off Date.

(C) An interim rental payment on February 1, 1983, in an amount equal to the sum of (1), (2), (3), (4), and (5) below less the amount specified in (A) and (B) above:

(1) the product of:

(a) the aggregate Purchase Price of the Schedule A Units

(h) .0317778%

(c) the number of days elapsed from and including the Deposit Date, to and excluding August 1, 1982.

(2) the product of:

(a) the aggregate Purchase Price of the Schedule B Units

(b) .0333333%

(c) the number of days elapsed from and including the date or dates of the applicable Deposited Amounts, to and excluding February 1, 1983

(3) the product of:

(a) the aggregate Purchase Price of the Schedule C Units

(b) .0366422%

(c) the number of days elapsed from and including the date or dates of the applicable Deposited Amounts, to and excluding February 1, 1983

(4) the product of:

(a) the aggregate Purchase Price of the Schedule D Units

(b) the daily equivalent (1/180) of the semi-annual rental factor to be applied to Schedule D Units

(c) the number of days elapsed from and including the date or dates of the applicable Deposited Amounts, to and excluding February 1, 1983

(5) the product of:

(a) the Surplus Deposit plus the Excess Equity, if any,

(b) the daily equivalent of the weighted average semi-annual factor defined below

(c) the number of days elapsed from and including the date or dates of the applicable Deposit Amounts to and excluding the Cut-Off Date.

The weighted average semi-annual factor in (5)(b) above shall be defined as the sum of:

(i) the aggregate Purchase Price of the Schedule A Units as a percentage of the aggregate Purchase Price of the Schedule A, B, and C Units multiplied by 5.72%

(ii) the aggregate Purchase Price of the Schedule B Units as a percentage of the aggregate Purchase Price of the Schedule A, B, and C Units multiplied by 6.00%

(iii) the aggregate Purchase Price of the Schedule C Units as a percentage of the aggregate Purchase Price of the Schedule A, B, and C Units multiplied by 6.5956%